IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

Nos. 78-1562 and 78-1724

CITRONELLE-MOBILE GATHERING, INC.,
Petitioner,

v.

GULF OIL CORPORATION and
FEDERAL ENERGY ADMINISTRATION,
Respondents.

PETITIONER'S REPLY MEMORANDUM

LESTER M. BRIDGEMAN
BRIDGEMAN & NERENBERG
1750 New York Avenue, N.W.
Washington, D.C. 20006
(202) 466-2510

Attorneys for Petitioner

PHILIP B. KURLAND
Two First National Plaza
Chicago, Illinois 60603
(312) 372-2345

Of Counsel

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The Government, in its brief in opposition, seeks to avoid the substantial and important question presented by the petitions in these cases rather than meeting them. It does not even cite, no less address, the cases of this Court establishing the rule of jurisdiction which the lower courts have rejected. No mention is to be found in the Government's brief of *Louisville & Nashville R. Co.* v. *Mottley,* 211 U.S. 149 (1908); *Gully* v. *First National Bank,* 299 U.S. 109 (1936); *Skelly Oil Co.* v. *Phillips Petroleum Co.,* 339 U.S. 667 (1950); or *Phillips Petroleum Co.* v. *Texaco,* 415 U.S. 125 (1974), no less the myriad of lower federal court cases, adhering to this Court's doctrine that a case does not "arise under" a federal law unless the federal law is a necessary ingredient of the plaintiff's

claim. See, *e.g.*, *Division 1287, Amalgamated Transit Union* v. *Kansas City Area Transp. Authority*, 582 F.2d 444 (8th Cir. 1978); *United States* v. *Galoob*, 573 F.2d 1167 (10th Cir. 1978); *Fairfax Countywide Citizens* v. *Fairfax County*, 571 F.2d 1299 (4th Cir. 1978); *Smith* v. *Grimm*, 534 F.2d 1346 (9th Cir. 1976); *Yancoskie* v. *Delaware River Port Authority*, 528 F.2d 722 (3d Cir. 1975); and cases cited in our briefs in support of our petitions for certiorari.

Instead, the Government seeks, by distortion of the facts, to suggest that the issue was not properly made below. The facts are that the Fifth Circuit had ruled that it would stay its hand on all of the several statutory and constitutional questions raised by Petitioner's appeal to it, until TECA ruled on a single question that the Fifth Circuit ordered the district court to certify to TECA. TECA refused jurisdiction over the consequently certified question—review there, incidentally, was sought by certification from the trial court and not by appeal of Petitioner—and ruled that, because all questions in the case fell properly within TECA's jurisdiction, it was too late to secure review from that court of any of them. In so doing TECA rejected and disparaged this Court's *Mottley* rule as ancient history, despite the repeated reaffirmations of that rule by this Court.

The Fifth Circuit ruling—which was not a final judgment but a temporary withholding of jurisdiction—was that its jurisdiction over all but the certified question would await the resolution of TECA's disposition of the certified question. When TECA failed to decide the certified question, Petitioner went back to the Court of Appeals for the Fifth Circuit so that it could resolve the questions that it had ruled

should await TECA's action. It refused to exercise its jurisdiction.

Unless the Congressionally established rules for jurisdiction of the federal courts are to be traps even for the diligent, Petitioner would seem to be entitled to one review on the merits of the controversy. Because of the inconsistent positions of TECA and the Fifth Circuit, Petitioner has been denied appellate review on the merits of any of its substantial constitutional and statutory issues. Even if Petitioner's interests were to be disregarded, it would seem incumbent on this Court to afford other parties in future cases an appropriate guide to appellate jurisdiction now confounded by TECA's decision and the Fifth Circuit's acquiescence in it. And not least is this so because the now controlling TECA position is flatly in contradiction of the decisions of this Court cited above and ignored by the Government in its brief in opposition.

The importance of the question is underlined by this Court's consistent position on the need to define federal jurisdiction in accordance with the Congressional command. Thus, in *City of Kenosha* v. *Bruno*, 412 U.S. 507, 511 (1973), this Court said: "Neither party to the appeal has questioned the jurisdiction of the District Court, but 'it is the duty of this court to see to it that the jurisdiction of the [district court], which is defined and limited by statute, is not exceeded.' *Louisville & Nashville R. Co.* v. *Mottley*, 211 U.S. 149 (1908)." And in *Mt. Healthy City Bd. of Education* v. *Doyle*, 429 U.S. 274, 278 (1977), it repeated: "Were it in truth a contention that the District Court lacked jurisdiction, we would be obliged to consider it, even as we are obliged to inquire sua sponte whenever a doubt arises as to the existence of federal ju-

risdiction. *Liberty Mutual Ins. Co.* v. *Wetzel*, 424 U.S. 737, 740 (1976); *Louisville & Nashville R. Co.* v. *Mottley*, 211 U.S. 149 (1908)."

We respectfully submit that certiorari should issue here, although the Court then need do nothing more than summarily to reverse the judgments below, because of their patent conflict with this Court's *Mottley* doctrine, and to order the Fifth Circuit Court of Appeals to determine the case on its merits.

Respectfully submitted,

LESTER M. BRIDGEMAN
BRIDGEMAN & NERENBERG
1750 New York Avenue, N.W.
Washington, D.C. 20006
(202) 466-2510

Attorneys for Petitioner

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Two First National Plaza
Chicago, Illinois 60603
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Of Counsel